

File No. 160169 Committee Item No. 2  
Board Item No. \_\_\_\_\_

**COMMITTEE/BOARD OF SUPERVISORS**  
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Committee: Public Safety and Neighborhood Services Date April 7, 2016

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Completed by: Erica Major Date April 1, 2016  
Completed by: \_\_\_\_\_ Date \_\_\_\_\_

# SAN FRANCISCO PUBLIC DEFENDER

JEFF ADACHI – PUBLIC DEFENDER  
MATT GONZALEZ – CHIEF ATTORNEY



March 3, 2016

Board of Supervisors  
City and County of San Francisco  
1 Dr Carlton B Goodlett Pl #244  
San Francisco, CA 94102

**Re: File No. 160169 (review of sanctuary policies)**

To the Board of Supervisors,

As San Francisco's Public Defender, I am pleased to participate in a city-wide compliance review of sanctuary policies. My office regularly represents non-citizens who are accused of crimes, who often face the dual prospect of criminal sanction and deportation if found guilty of the alleged offense. I have witnessed first-hand how police/immigration collaboration programs have undermined safety and sabotaged efforts both to defend innocent people wrongly accused of crimes and to rehabilitate people with longstanding ties to the community who, like many of us, may have made mistakes.

The following evaluation also includes some recommendations, which are designed to help this great city further the goals of sanctuary policies—to promote public safety and ensure an environment of tolerance and inclusion for the city's many foreign born residents.

## Purpose of Sanctuary laws

The core purpose of San Francisco's sanctuary policies is to promote public safety, so non-citizen crime victims are not dissuaded from reporting crimes to the police out of fear of deportation.<sup>1</sup> Virtually every major U.S. city has a sanctuary policy, and these policies have overwhelming support among law enforcement in virtually major urban area in the United States.<sup>2</sup> Since San Francisco has a large foreign born population

<sup>1</sup> See generally *Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy*, Bill Hing, UC Irvine Law Review, 2 UC Irvine L. Rev. 247, 300 (Feb. 2012)

<sup>2</sup> There are approximately 340 "Sanctuary Cities" in the United States. See *The great sanctuary slander*, NYT Editorial, Oct. 15, 2015, available at: [http://www.nytimes.com/2015/10/17/opinion/the-great-sanctuary-city-slander.html?\\_r=0](http://www.nytimes.com/2015/10/17/opinion/the-great-sanctuary-city-slander.html?_r=0); See also October 15, 2015 Letter to Congress (opposing federal legislation designed to "defund" sanctuary cities), authored by twenty five Police Chiefs from major cities, available at:

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(approximately 35% of its residents) is crucially important for San Francisco to maintain polices which will ensure that immigrant crime victims do not fear going to the police.<sup>3</sup>

### **No correlation between public safety and police/immigration collaboration**

Federal police/immigration collaboration programs do not promote public safety. According to a recent study conducted by law professors at NYU and the University of Chicago Law School, increased cooperation between local police and immigration had “no observable effect” on crime rates.<sup>4</sup> This comprehensive study found that the “Secure Communities Program”—a federal program which required local law enforcement to transfer undocumented detainees to ICE for deportation—did not improve crime rates. Similarly, it is well established that there is no correlation between increased immigration and increased crimes. In fact, studies suggest the opposite—as immigrants are underrepresented in California’s jails and prisons (representing 35% of the population, but only 17% of people in prison).<sup>5</sup>

### **San Francisco’s administrative provisions limiting cooperation in immigration enforcement**

SF Administrative Code sections 12H and 12I are the core sanctuary rules in San Francisco. Section 12H(1-2) forbids city employees from using city resources to assist federal immigration authorities, subject to some exceptions.<sup>6</sup> Section 12H.3 requires appointing officers to provide written directives for implementing sanctuary rules, and requires discipline against employees who fail to comply. Section 12I forbids city

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[http://immigrationforum.org/wp-content/uploads/2015/10/10\\_15\\_2015-LEITF-Letter-to-Senate-on-Sanctuary-Cities-Legislation.pdf](http://immigrationforum.org/wp-content/uploads/2015/10/10_15_2015-LEITF-Letter-to-Senate-on-Sanctuary-Cities-Legislation.pdf)

<sup>3</sup> See SF Census Data, available at <http://www.census.gov/quickfacts/table/PST045215/06075>

<sup>4</sup> See Adam Cox, Thomas J. Miles, *Immigration Enforcement and Crime Control: A Study of Secure Communities*, *Journal of Law & Economics*, 57 J.L. & Econ. 937 (Nov. 2014), (stating: . . . “[T]he Secure Communities program has had no observable effect on the overall crime rate.”).

<sup>5</sup> See Kristin F. Butcher and Anne Morrison Piehl, *Crime, Corrections, and California: What Does Immigration Have to Do with It?*, Public Policy Institute, Feb. 2008, available at: <http://www.ppic.org/main/publication.asp?i=776> (stating: “[t]he U.S.-born are 10 times more likely than the foreign-born to be in jail or prison. Even among noncitizen men from Mexico ages 18-40 – a group disproportionately likely to have entered the United States illegally – the authors find very low rates of institutionalization.”)

<sup>6</sup> See SF Administrative Code 12H and 12I, available at: [http://library.amlegal.com/nxt/gateway.dll/California/police/policecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/police/policecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)

employees from honoring a civil immigration detainer unless an individual has had serious criminal history.

Sanctuary policies in San Francisco have evolved over the last several decades. More recently, due to both a dramatic increase in the number of deportations, and increased collusion between federal and local authorities—San Francisco has taken stronger steps to prevent automatic transfers of immigrant detainees for deportation. In November, 2013, the SF Board of Supervisor enacted the Due Process for All Ordinance, which placed strict limits on the ability to hold a non-citizen in custody pursuant to a request (or detainer) from immigration authorities. The Ordinance also requires the Sheriff and Juvenile Probation Departments to provide a written annual report to the Board of Supervisors addressing sanctuary issues.<sup>7</sup>

### **Ongoing compliance issues and recommendations**

#### **1) The case of Pedro Figueroa: recognizing the difference between civil and criminal warrants.**

**The problem:** The Sheriff’s Department’s “Central Warrants Bureau” was unable to quickly distinguish between an enforceable criminal warrant and an unenforceable civil immigration warrant, leading to the illegal detention and immigration arrest of Pedro Figueroa. A rogue police officer appeared to have called ICE and assisted in a civil immigration matter against written policy.<sup>8</sup>

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<sup>7</sup> SF Admin Code 12I.5.

<sup>8</sup> Unlike a warrant signed by a judge, immigration orders are civil orders which carry no power to compel a local law enforcement officer to act—even if ICE labels the request as a “warrant.” See generally *Immigration Enforcement Authority for Local Law Enforcement Agents*, ILRC (Nov. 2014), available at: [http://www.ilrc.org/files/documents/lea\\_immig\\_faqs\\_20150318.pdf](http://www.ilrc.org/files/documents/lea_immig_faqs_20150318.pdf); see also 8 C.F.R. § 287.5, 241.2; *Coolidge v. New Hampshire*, 403 U.S. 443, 453 (1971) (where search warrant was not issued by “the neutral and detached magistrate required by the Constitution, the search stands on no firmer ground than if there had been no warrant at all”); *El Badrawi v. Dept. of Homeland Sec.*, 579 F. Supp. 2d 249, 275–76 (D. Conn. 2008) (arrest pursuant to administrative warrant was “warrantless”); *El Badrawi v. United States*, 787 F. Supp. 2d 204, 230 & n.17 (D. Conn. 2011) (granting summary judgment on false arrest claim to plaintiff who had been subject of administrative warrant); *United States v. Toledo*, 615 F. Supp. 2d 453, 455, 459–60 (S.D. W. Va. 2009); *United States v. Toledo*, 615 F. Supp. 2d 453, 455, 457 n.2 (S.D. W. Va. 2009) (an administrative warrant in the file did not mean that local officers had authority to arrest)

**What happened:** On December 5, 2015, Pedro Figueroa, a former client of the SF Public Defender’s Office, entered the SF Police Department headquarters at Mission Bay to retrieve his stolen car. But when he provided his name and identification, police conducted a background check. There was a hit in the National Crime Information Center (NCIC) database, which the Central Warrants Bureau from the Sheriff’s Department confirmed.<sup>9</sup> The Police officer called immigration authorities, then placed Mr. Figueroa in handcuffs and interrogated him about his immigration status. After several minutes, the Sheriff confirmed the warrant was a civil and not a criminal warrant, and Mr. Figueroa was released from police custody—but outside, ICE agents were there to place him under arrest and process him for deportation.

**The solution:** The Sheriff’s Department must take steps to ensure a clear process of recognizing the difference between an unenforceable civil warrant, and an enforceable criminal warrant. There should be no confusion between the two types of “warrants.” And, the police department should ensure that any officer who egregiously violates internal immigration rules and protocols are subject to discipline, up to and including termination.

**2) Correcting Outdated Language—12H2-1 “felony exception” is no longer relevant:**

**The problem:** The SF Sanctuary Ordinance, section 12H-2-1, wrongly implies that law enforcement is permitted to cooperate with immigration authorities if any person is “booked” on a felony. There needs to be a language change to ensure 12H-2 is harmonized with current practices and, at a minimum, the restrictions stated in SF Administrative Code section 12I-3, which permits cooperation only where an individual has serious criminal history.

**What has happened:** For years, the SF Administrative Code permitted collusion between the law enforcement and immigration if a non-citizen was merely “booked” on—but not convicted of—a felony. This provision is now known as the “felony exception” to the Sanctuary Ordinance. But the felony exception undermined the public’s trust in law enforcement, as countless non-citizens were transferred to immigration from the SF Jail even though they were completely innocent of criminal conduct, including numerous domestic violence survivors who were falsely accused

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<sup>9</sup> In 2002, the NCIC began to include immigration warrants into its national warrant database. See Major Cities Chiefs Immigration Committee, Recommendations for Enforcement of Immigration Laws by Local Police Agencies, 2006, at p. 10, available at: [http://www.houstontx.gov/police/pdfs/mcc\\_position.pdf](http://www.houstontx.gov/police/pdfs/mcc_position.pdf).

of a crime.<sup>10</sup> The “felony exception” language is now inconsistent with the spirit and purpose of the Sanctuary Ordinance. It is also inconsistent with the Sheriff Department’s actual practices, which prohibit immigration officers from entering the jails, and prevent the detention of non-citizens for purely immigration purposes.

**The solution:** The Board of Supervisors should clean up the “felony exception” language to reflect actual current practices, and harmonize the felony exception with the restrictions set forth in SF Admin. Code section 12I.3.

### 3) ICE interference with San Francisco criminal proceedings.

**The problem:** Immigration authorities have arrested non-citizen public defender clients while they have pending criminal matters, and before the resolution of their case. This practice has caused confusion in the Courts, and has led some judges to issue bench warrants against the non-citizen.

**What has happened:** Since May, 2015, at least four SF Public Defender clients were arrested by immigration authorities, placed in indefinite immigration detention, and ordered to appear in detained immigration court for removal proceedings. Immigration authorities receive notice of individuals arrested on a crime because of mandatory fingerprint sharing technology. It is unclear, though, how immigration authorities are locating non-citizen clients, as most of the immigration arrests have taken place at the non-citizen’s home. In one case, an non-citizen father and family bread winner who has lived in the United States for more than 20 years, was arrested for a DUI—the first such arrest in his life. During his criminal case, immigration authorities somehow discovered where he lived, went to his home, placed him under arrest, and processed him for deportation. Luckily, he sought help from our office, who took on both his criminal and deportation case. Since he was not intoxicated at the time of his arrest, he pled guilty to a non-alcohol related driving infraction—but his deportation case remains pending. It is unclear how immigration authorities discovered his address.

**The solution:** The SF Board of Supervisors should declare that immigration authorities should not target for immigration arrest any individual with a pending criminal matter.

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<sup>10</sup> See Lee Romney, Noncriminals swept up in federal deportation program, LA Times (April 25, 2011), available at: <http://articles.latimes.com/2011/apr/25/local/la-me-secure-communities-20110425>

**4) Adult Probation Department—Ensuring compliance with sanctuary laws.**

**The problem:** It is unclear whether the Adult Probation Department has adopted sanctuary policies consistent with the newly enacted Due Process for All Ordinance from November, 2013.

**What has happened:** the Adult Probation Department is responsible for monitoring and supervising individuals who are on probation, or subject to an alternative disposition, as a result of a criminal case. Probation officers regularly meet with defendants and draft reports for a court's review about an individual's compliance with probation conditions. APD initially drafted a sanctuary policy, as it is required to do under SF Admin Code 12H-3, but it is unclear whether the policy was finalized, and if so, what the policy says.

**The Solution:** The Adult Probation Department should finalize its sanctuary policies so it is consistent with the Due Process for All Ordinance. It is unclear whether the Adult Probation Department has adopted an internal sanctuary type policy, nor is it clear whether individual probation officers have authority to contact immigration authorities.

**Conclusion—San Francisco must maintain robust policies ensuring the separation between police and immigration.**

When San Francisco participated in police/immigration deportation schemes, such as the now discredited "Secure Communities" program, the results were disastrous for immigrant communities. The program led to the denial of due process and ultimate deportation thousands of hard working San Franciscans, separating families, and causing economic devastation in working class communities. San Francisco should not go backwards on sanctuary policies, and instead should work to vigilantly assure to our city's non-citizen population that San Francisco is a city for all.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Jeff Adachi', with a large, stylized flourish at the end.

Jeff Adachi, Public Defender  
City and County of San Francisco

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Greg Suhr, Chief, Police Department  
Vicki Hennessy, Sheriff, Sheriff's Department  
George Gascón, District Attorney, Office of the District Attorney  
Jon Givner, Deputy City Attorney, Office of the City Attorney  
Karen L. Fletcher, Chief Adult Probation Officer, Adult Probation  
Department  
Allen Nance, Chief Probation Officer, Juvenile Probation Department  
Jeff Adachi, Public Defender, Office of the Public Defender.

FROM: Erica Major, Assistant Committee Clerk, Public Safety and Neighborhood  
Services Committee, Board of Supervisors

DATE: March 1, 2016

SUBJECT: HEARING MATTER INTRODUCED

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The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following hearing request, introduced by Supervisor Avalos on February 23, 2016:

**File No. 160169**

**Hearing to review the policies, practices, and climate of the San Francisco Police and Sheriff's Departments in relation to immigration enforcement including a review of needed updates to address new immigration enforcement procedures through the Priority Enforcement Program, and a review of the actions taken in the case of Pedro Figueroa-Zarceno and whether such actions were permitted under the Sanctuary City and Due Process for All Ordinances.**

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Referral from the Office of the Clerk of the Board  
Public Safety and Neighborhood Services Committee  
March 1, 2016  
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c:

Christine Fountain, Police Department  
Theodore Toet, Sheriff's Department  
Katherine Gorwood, Sheriff's Department  
Eileen Hirst, Sheriff's Department  
Cristine Soto DeBerry, Office of the District Attorney  
Maxwell Szabo, Office of the District Attorney  
LaShaun Williams, Adult Probation Department  
Sheryl Cowan, Juvenile Probation Department

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.  
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative.**

**Sponsor(s):**

Supervisors Avalos, Campos

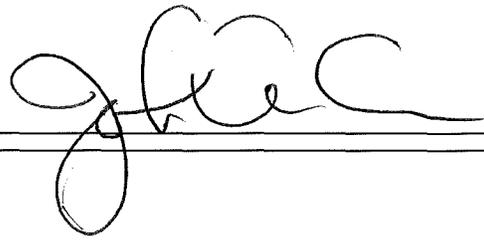
**Subject:**

Hearing - Review of San Francisco Police Department and Sheriff's Department policies, practices, and climate in relation to immigration enforcement

**The text is listed below or attached:**

Hearing to review the policies, practices, and climate of the San Francisco Police Department and Sheriff's Department in relation to immigration enforcement including a review of needed updates to address new immigration enforcement procedures through the Priority Enforcement Program (PEP), and a review of the actions taken in the case of Pedro Figueroa-Zarceno and whether such actions were permitted under the Sanctuary City and Due Process for All ordinances.

Signature of Sponsoring Supervisor:

A handwritten signature in black ink, appearing to be 'J. Mac', written over a horizontal line. The signature is cursive and somewhat stylized.

For Clerk's Use Only: